

REMARKS

The Office Action mailed January 7, 2009, was reviewed and the comments of the Patent and Trademark Office were considered. Claims 1 – 10, 12 – 22 and 24 were pending in the application. Claims 1 and 9 have been amended by this response, and claim 12 was cancelled. Therefore, claims 1 – 10, 13 – 22 and 25 are pending in the application and submitted for reconsideration. Support for these claims can be found in: the original claims and the specification, at page 11, l. 29 – page 30, l. 12.

This amendment adds, changes or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, are presented, with an appropriate defined status identifier. Applicant further reserves the right to pursue any cancelled claims in related applications.

PRIORITY

The Examiner notes that the Petition Under 35 CFR 1.78(a)(3) to amend the priority was dismissed. A Renewed Petition Under 35 CFR 1.78(a)(3) was filed April 1, 2009 to correct the priority date to October 9, 2001. For purposes of this response, Applicant will be using the priority date of October 9, 2001.

DOUBLE PATENTING REJECTIONS

The Examiner has provisionally rejected claims 1 – 10, 12 – 22 and 24 on the ground of nonstatutory obviousness type double patenting as being unpatentable over the claims of the pending application number 10/492,129. The Examiner has not indicated which claims of the co-pending application conflicts with the current claims. As such, Applicant requests that the Examiner give more specific information regarding this rejection, so we may properly respond.

Applicants believe that the instant application is patently distinct from US application number 10/492,129. For sake of expediting prosecution, Applicants submit herewith a terminal disclaimer signed by the assignee record. Applicants therefore respectfully request that this rejection be withdrawn.

§ 112 REJECTION

The Examiner has rejected claims 1-10, 12-22, and 23 under 35 U.S.C. 112, second paragraph, for being indefinite for failing to particularly point out and distinctly claim the subject matter. In particular, the Examiner objects to the use of a trademark or trade name in the claim.

Applicants have removed the trademarks and trade names from the claims, and substituted the chemical names of these compounds. This amendment is supported by the specification at page 11, l. 29 – page 12, l. 11.

§ 102 REJECTION

The Examiner rejected claims 1-10, 22-22, and 23 under 35 U.S.C. 102 (b) as being anticipated by Legrand et al. (“Legrand”). The Examiner notes that Legrand is FR 2,830,447, and US publication number 2005/0037077 is relied upon as an equivalent English translation thereof. Applicants note, however, that US publication number 2005/0037077 is US application number 10/492,129.

As noted above, Applicants have filed a Renewed Petition Under 35 CFR 1.78(a)(3) on April 1, 2009 to correct the priority claim of the instant application. In sum, Applicants assert that the present application claims priority to U.S. application no. 10/492,129, which has the priority date of October 9, 2001.

Applicants believe that the instant application is patently distinct from its parent US application number 10/492,129. For sake of expediting prosecution, Applicants submit herewith a terminal disclaimer signed by the assignee record. Applicants therefore respectfully request that this rejection be withdrawn.


CONCLUSION

In view of the foregoing, it is respectfully submitted that the pending claims are in condition for allowance. Entry of this amendment and an early notice to this effect is earnestly solicited. Should there be any questions regarding this application, the Examiner is invited to contact the undersigned at the number shown below.

Applicants believe no fee is due with this response. If a fee is due, however, please charge our Deposit Account No. 50-2228, under Order Number 022290.0116C1US.

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Respectfully submitted,

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